

The Senate Education and Youth Committee offered the following substitute to SB 361:

A BILL TO BE ENTITLED
AN ACT

To amend Article 33 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the scholarship program for special needs students, so as to expand eligibility for the program; to rename the scholarship the "Georgia Early HOPE Scholarship"; to revise definitions; to provide for additional notification of the program; to provide for additional state funds to be included in the scholarship payment; to provide deadlines for scholarship payments to parents; to provide for related matters; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 33 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the scholarship program for special needs students, is amended by revising Code Section 20-2-2110, relating to the short title, as follows:

"20-2-2110.

This article shall be known and may be cited as the 'Georgia ~~Special Needs~~ Early HOPE Scholarship Act.'"

SECTION 2.

Said article is further amended by revising Code Section 20-2-2111, relating to legislative findings, as follows:

"20-2-2111.

The General Assembly finds that:

- (1) ~~Students with disabilities~~ Many Georgia students have special needs that merit educational alternatives which will allow students to learn in an appropriate setting and manner;

(2) Parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their children;

(3) Children, parents, and families are the primary beneficiaries of the scholarship program authorized in this article and any benefit to private schools, sectarian or otherwise, is purely incidental;

(4) The scholarship program established in this article is for the valid secular purpose of tailoring a student's education to that student's specific needs and enabling families to make genuine and independent private choices to direct their resources to appropriate schools; and

(5) Nothing in this article shall be construed as a basis for granting vouchers or tuition tax credits for any other students, ~~with or without disabilities~~ not expressly included in this article."

SECTION 3.

Said article is further amended by revising Code Section 20-2-2112, relating to definitions, as follows:

"20-2-2112.

As used in this article, the term:

(1) 'Board' means the State Board of Education.

(2) 'Department' means the Department of Education.

(2.1) 'Eligible student' means a:

(A) Student with a disability;

(B) Section 504 student;

(C) Foster care student; or

(D) Military family student.

(2.2) 'Foster care student' means a student who is or has been in a foster home or otherwise in the foster care system under the Division of Family and Children Services of the Department of Human Services. A foster parent who has legal authority to act on behalf of a foster care student shall not be considered a state actor or agent of the state.

(2.3) 'Military family student' means a dependent child of a:

(A) Parent in the military on active duty; or

(B) Parent in the national guard or reserves.

(3) 'Parent' means a biological parent, legal guardian, custodian, foster parent, or other person with legal authority to act on behalf of a child; provided, however, that for a foster care student, a parent shall not include a state actor or agent of the state.

(4) 'Participating school' means a private school that has notified the department of its intention to participate in the program; and that complies with the department's requirements.

(5) 'Prior school year in attendance' means that the student was enrolled and reported by a public school system or school systems for funding purposes during the preceding October and March full-time equivalent (FTE) program counts in accordance with Code Section 20-2-160.

(6) 'Private school' means a nonpublic school, sectarian or nonsectarian, which is accredited or in the process of becoming accredited by one or more of the entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519.

(7) 'Program' means the scholarship program established pursuant to this article.

(8) 'Resident school system' means the public school system in which the student would be enrolled based on his or her residence.

(9) 'Scholarship' means a Georgia ~~Special Needs~~ Early HOPE Scholarship awarded pursuant to this article.

(10) 'Scholarship student' means a student who receives a scholarship pursuant to this article.

(11) 'Section 504 student' means a student who is eligible for services under Section 504 of the federal Rehabilitation Act of 1973 and shall have had a Section 504 plan written by the school in accordance with federal and state laws and regulations.

(12) 'Student with a disability' means a student who:

(A)(i) Has one or more of the following disabilities:

(I) Autism;

(II) Deaf/blind;

(III) Deaf/hard of hearing;

(IV) Emotional and behavioral disorder;

(V) Intellectual disability;

(VI) Orthopedic impairment;

(VII) Other health impairment;

(VIII) Specific learning disability;

(IX) Speech-language impairment;

(X) Traumatic brain injury; or

(XI) Visual impairment; and

(ii) Has had an individualized education program (IEP) written by the school in accordance with federal and state laws and regulations; or

(B) Is a student in the psychoeducational program."

SECTION 4.

Said article is further amended by revising Code Section 20-2-2113, relating to annual notification of options available to parents of special needs children, as follows:

"20-2-2113.

(a) The resident school system shall ~~annually notify prior to the beginning of each school year the parent of~~ provide the following notice to the parents of all enrolled students a student with a disability by letter, by electronic means, or by such other reasonable means in a timely manner of the options available to the parent under this article; and, if the school system utilizes automated telephone calls, by such automated system in each January and April:

'Your child may be eligible for a Georgia Early HOPE Scholarship to attend a private school or another public school if your child has an Individualized Education Program (IEP) or Section 504 plan, is currently or has been in foster care, or has a parent currently in the military, reserves, or national guard. Information may be found at www.earlyhopescholarship.org relating to eligibility requirements.'

In addition, the resident school system shall ensure that a student with a disability is notified at each individualized education program (IEP) meeting and a Section 504 student is notified at each Section 504 meeting.

(b)(1) The parent may choose for the student to attend another public school within the resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program for a student with a disability or in the student's existing Section 504 plan, if the student is a Section 504 student. If the parent chooses this option, then the parent shall be responsible for transportation to such school. The student may attend such public school pursuant to this paragraph until the student completes all grades of the school, graduates, reaches the age of 20, if the student is a foster care student or a military family student, or reaches the age of 21, if the student is a student with a disability or is a Section 504 student, whichever occurs first, in accordance with federal and state requirements for disabled students. For purposes of this paragraph, available space shall include all classrooms in permanent buildings and existing portable units and trailers;

(2) The parent may choose to enroll the student in and transport the student to a public school outside of the student's resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program for a student with a disability or in the student's existing Section 504 plan, if the student is a Section 504 student. The public school system may, in its sole discretion, accept the student, and if it does, such system shall report the student for purposes of funding to the department;

(3) The parent may choose for the student to attend one of the state schools for the deaf and blind operated by the State Board of Education, if appropriate for the student's needs. Funding for such students shall be provided in accordance with Code Section 20-2-302; or

(4) The parent may request and receive from the department a scholarship for the student to enroll in and attend a participating private school in accordance with this article."

SECTION 5.

Said article is further amended by revising Code Section 20-2-2114, relating to qualifications for scholarship, as follows:

"20-2-2114.

(a) A student shall qualify for a scholarship under this article if:

(1) ~~The student's parent currently resides within Georgia and has been a Georgia resident for at least one year~~ student has spent the prior school year in attendance at a Georgia public school;

(2) ~~The student has one or more of the following disabilities:~~ is an eligible student;

~~(A) Autism;~~

~~(B) Deaf/blind;~~

~~(C) Deaf/hard of hearing;~~

~~(D) Emotional and behavioral disorder;~~

~~(E) Intellectual disability;~~

~~(F) Orthopedic impairment;~~

~~(G) Other health impairment;~~

~~(H) Specific learning disability;~~

~~(I) Speech-language impairment;~~

~~(J) Traumatic brain injury; or~~

~~(K) Visual impairment;~~

~~(3) The student has spent the prior school year in attendance at a Georgia public school and shall have had an Individualized Education Program (IEP) written by the school in accordance with federal and state laws and regulations;~~

~~(4)~~(3) The parent obtains acceptance for admission of the student to a participating school; and

~~(5)~~(4) The parent submits an application for a scholarship to the department no later than the deadline established by the department; provided, however, that the department shall provide application deadline opportunities on August 1, October 1, January 1, and March 1 of each school year for a student to transfer at any time throughout such school year.

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student, including transportation to and from the participating school.

(c) For a student who participates in the program whose ~~parents~~ parent request requests that ~~the~~ such student take the state-wide assessments pursuant to Code Section 20-2-281, the resident school system shall make available to the student locations and times to take all state-wide assessments. Test scores of private school students participating in the state-wide assessments shall not be applied to the system averages of the resident school system for data reported for federal and state requirements.

(d) Students enrolled in a school operated by the Department of Juvenile Justice are not eligible for the scholarship.

(e) The scholarship shall remain in force until the student returns to his or her assigned school in the resident public school system, graduates from high school, reaches the age of 20, if the student is a foster care student or a military family student, or reaches the age of 21, if the student is a student with a disability or is a Section 504 student, whichever occurs first. However, at any time, the student's parent may remove the student from the participating school and place the student in another participating school or public school as provided for in Code Section 20-2-2113.

(f) ~~Acceptance~~ For a student with a disability, acceptance of a scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq.

(g) The creation of the program or the granting of a scholarship pursuant to this article shall not be construed to imply that a public school did not provide a free and appropriate public education for a student or constitute a waiver or admission by the state.

(h) Any scholarship directed to a participating school is so directed wholly as a result of the genuine and independent private choice of the parent.

(i) The parent of each student participating in the scholarship program shall comply fully with the participating school's rules and policies.

(j) Any parent who fails to comply with the provisions of this article and department regulations relating to the scholarship shall forfeit the scholarship."

SECTION 6.

Said article is further amended by revising Code Section 20-2-2115, relating to eligibility requirements for schools participating in scholarship program, as follows:

"20-2-2115.

(a) To be eligible to enroll a scholarship student, a participating school shall:

(1) Have a physical location in Georgia where the scholarship students attend classes and have direct contact with the school's teachers;

(2) Demonstrate fiscal soundness by having been in operation for one school year or by submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant. The report must confirm that the school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming school year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. The report shall be limited in scope to those records that are necessary for the department to make a determination on fiscal soundness and to make payments to schools for scholarships;

(3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

(4) Comply with all health and safety laws or codes that apply to private schools;

(5) Comply with all provisions of Code Section 20-2-690 and any other state law applicable to private schools;

(6) Regularly report to the parent and the department on the student's academic progress, including the results of pre-academic assessments and post-academic assessments given to the student, in accordance with department guidelines; and

(7) Employ or contract with teachers who hold a bachelor's degree or higher degree or have at least three years of experience in education or health and annually provide to the parents the relevant credentials of the teachers who will be teaching their students.

(b) A home school operating under the provisions of Code Section 20-2-690 shall not be eligible to enroll scholarship students.

(c) Residential treatment facilities licensed or approved by the state shall not be eligible to enroll scholarship students.

(d) The creation of the program shall not be construed to expand the regulatory authority of the state, its officers, or any public school system to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce the requirements of this article.

(e) A ~~participating~~ school intending to enroll scholarship students shall ~~submit an application to~~ notify the department by June 30 of the school year preceding the school year in which it intends to enroll scholarship students. The notice shall specify the grade levels and services that the school has available for students ~~with disabilities~~ who are participating in the scholarship program. ~~A school intending to enroll scholarship students in the 2007-2008 school year shall submit an application no later than June 30, 2007.~~

(f) The board shall approve a participating school's application to enroll scholarship students if the school meets the eligibility requirements of this article and complies with

board rules established pursuant to Code Section 20-2-2117. The board shall make available to local school systems and the public a list of participating schools.

(g) Nothing in this Code section shall be construed to require a participating school to adhere to the requirements of either the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973 or to prevent a participating school from providing single-sex education."

SECTION 7.

Said article is further amended by revising Code Section 20-2-2116, relating to amount of scholarship, as follows:

"20-2-2116.

(a) The maximum scholarship granted a scholarship student pursuant to this article shall be an amount equivalent to the costs of the educational program that would have been provided for the student in the resident school system as calculated under Code Section 20-2-161 plus a proportional share of state categorical grants, non-QBE state grants, state equalization grants, and all other state grants and a proportional share of funding for transportation, food services, and building programs. A proportional amount shall be calculated by dividing the total funding by the total number of students in the school system. This shall not include any federal funds.

(b) The amount of the scholarship shall be the lesser of the amount calculated in subsection (a) of this Code section or the amount of the participating school's tuition and fees, if applicable. The amount of any assessment fee required by the participating school may be paid from the total amount of the scholarship.

(c) Scholarship students shall be counted in the enrollment of their resident school system; provided, however, that this count shall only be for purposes of determining the amount of the scholarship and the scholarship students shall not be included as enrolled for purposes of state or federal accountability requirements, including, but not limited to, the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110). The funds needed to provide a scholarship shall be subtracted from the allotment payable to the resident school system.

(d) Each local school system shall submit quarterly reports to the department on dates established by the department stating the number of scholarship students in the resident school system. Following each notification, the department shall transfer from the state allotment to each school system the amount calculated under Code Section 20-2-161 to a separate account for the scholarship program for quarterly disbursement to the parents of scholarship students. When a student enters the program, the department must receive all documentation required for the student's participation, including the participating school's

and student's fee schedules at least 30 days before the ~~first quarterly~~ initial scholarship payment is made for the student. The department ~~may not make any retroactive payments~~ shall only make payments for days actually enrolled on a prorated basis.

(e) Upon proper documentation received by the department, the department shall make equal quarterly scholarship payments to the parents of scholarship students ~~on dates established by the department~~ or, for students who have been enrolled in a participating school for at least ten days in the prior quarter if such students enrolled in the participating school after the school's start date, the department shall make scholarship payments to the parents of such students beginning on the next payment date included in this subsection. The department shall make payments on or before September 1, November 1, February 1, and April 1 for periods corresponding, respectively, to July 1 through September 30, October 1 through December 31, January 1 through February 28, and March 1 through June 30 during each academic year in which the scholarship is in force. In the event that a quarterly payment date is missed due to a student not having been enrolled for at least ten days in the prior quarter, the full or prorated scholarship amount, as applicable, for that deadline shall be included in the payment on the next following payment deadline. The state auditor shall cite as an audit exception any failure by the department to meet any such payment deadlines and shall include such audit exceptions on the website established pursuant to Code Section 50-6-32. The initial payment shall be made upon evidence of admission to the participating school, and subsequent payments shall be made on evidence of continued enrollment and attendance at the participating school.

(f) Payment to the parents must be made by individual warrant made payable to the student's parent and mailed by the department to the participating school of the parent's choice, and the parent shall restrictively endorse the warrant to the participating school for deposit into the account of such school.

(g) A person, on behalf of a participating school, may not accept a power of attorney from a parent to sign a warrant, and a parent of a scholarship student may not give a power of attorney designating a person, on behalf of a participating school, as the parent's attorney in fact.

(h) If the participating school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school, that partial payment may be paid by the department prior to the first quarterly payment of the year in which the scholarship is awarded, up to a maximum of \$1,000.00, and deducted from subsequent scholarship payments. If a student decides not to attend the participating school, the partial reservation payment must be returned to the department by such school. Only one reservation payment per student may be made per year."

311 **SECTION 8.**

312 In the event any section, subsection, sentence, clause, or phrase of this Act is declared or
313 adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect
314 the remaining portions of this Act, which shall remain of full force and effect as if such
315 portion so declared or adjudged invalid or unconstitutional were not originally a part of this
316 Act. The General Assembly declares that it would have enacted the remaining parts of this
317 Act if it had known that such portion hereof would be declared or adjudged invalid or
318 unconstitutional.

319 **SECTION 9.**

320 This Act shall become effective upon its approval by the Governor or upon its becoming law
321 without such approval.

322 **SECTION 10.**

323 All laws and parts of laws in conflict with this Act are repealed.